

DECEMBER 19, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

SPECIAL PRESENTATIONS**SUPERIOR ACCOMPLISHMENT AWARDS****Group Silver Awards***Basic Sales and Use Tax Law (TL-1) Rewrite Team*

Barbara Beck Brian Wiggins

Welfare Exemption Scanning Team

Jayne Bautista	Pam Bowens	Alan Dannen	Erica Fisher
Annette Hale	Bryan Niemeyer	Laura SooHoo	Shirley Turner

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 10:00 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation, settlements (Revenue and Taxation Code sections 7093.5) and personnel matters (Govt. Code § 11126 (a)).

The Board recessed at 10:20 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

James E. Speed, Executive Director, announce the appointment of Ms. Marcia A. Davey, to the position of Chief, Financial Management Division.

ADMINISTRATIVE SESSION**CITY OF LAGUNA HILLS APPEAL HEARING REQUEST****Public Comment**

Doug Boyd, The HdL Companies, requested that the City of Laguna Hills appeal hearing be held in February.

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Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered to place the *City of Laguna Hills* appeal hearing on the February Sacramento Board meeting.

2003-04 BASELINE BUDGET

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the proposed 2003-04 baseline budget (Exhibit 12.19).

Exhibits to these minutes are incorporated by reference.

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following retirement resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 12.20).

Edward R. Fosha, Business Taxes Compliance Supervisor III, Return Analysis Section, Headquarters

Earle P. Gutman, Senior Specialist Property Auditor Appraiser, County Property Tax Division, Timber Tax Section, Headquarters

James K. McManigal, Jr., Tax Counsel IV, Legal Department, Property Tax Division, Headquarters

Richard Newell, Business Taxes Specialist I, Santa Rosa District, Eureka Branch Office

Susan J. Rainwater, Office Technician (Typing), Consumer Use Tax Section, Headquarters

Action: Adopt the following Board resolutions extending its best wishes on their respective careers and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 12.21).

Marcy Jo Mandel, Deputy Controller, Controller's Office

Jean H. Alexander, Chief of Staff, Board Member's Office, First District

Melanie M. Darling, Tax Counsel, Board Member's Office, First District

Arnulfo Hernández, Jr., Tax Counsel, Board Member's Office, First District

Katherine MacDonald, Tax Counsel, Board Member's Office, First District

Anne B. Mazur, Program Specialist, Board Member's Office, First District

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Elizabeth Jane Mc Killop, Executive Assistant, Board Member's Office, First District

Rita Rae Perry, Administrative Assistant, Board Member's Office, First District

Tonya Reese, Staff Services Analyst, Board Member's Office, First District

Rebecca Ruppert, Deputy Chief of Staff, Board Member's Office, First District

Kenneth Topper, Professional Advisor, Board Member's Office, First District

Shirlee L. Wong, Executive Assistant, Board Member's Office, First District

Sally Lee, Deputy Director, Administration Department, Headquarters

Action: Approve the proposed revisions to Form-345, Notice of Business Change (Exhibit 12.22).

Action: Approve the proposed revisions to Compliance Policy and Procedures Manual, Preface and proposed revisions to Compliance Policy and Procedures Manual Chapter 7, Collections (Exhibit 12.23).

Action: Approve the proposed revisions to Audit Manual Chapter 5, Penalties (Exhibit 12.24).

Action: Approve the proposed revision to Audit Manual Chapter 10, Occasional Sales-Sale of a Business (Exhibit 12.25).

Action: Approve the Property Tax Welfare Exemption Claims for Low-Income Housing – Proposed New Limited Partnership Forms, BOE-267L1 and BOE-267L2 (Exhibit 12.26).

Action: Approve the 2003 Administrative Redistricting Plan (Exhibit 12.27).

BOARD COMMITTEE REPORTS

Property Tax Committee

Upon motion of Ms. Mandel, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 12.28).

Business Taxes Committee

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 12.29).

SPECIAL PRESENTATIONS

On behalf of the Board, Mr. Chiang presented to Dean Andal, Board Member, Second District, a Board resolution extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California.

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On behalf of the Board, Mr. Andal presented to Marcy Jo Mandel, Deputy Controller, State Controller's Office, a Board resolution extending its sincere and grateful appreciation for her dedicated service to the State Board of Equalization and the State of California.

On behalf of the Board, Mr. Chiang presented to James K. McManigal, Jr., Tax Counsel IV, Property Tax Division, Legal Department, a retirement resolution extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California.

On behalf of the Board, Mr. Klehs presented to Kenneth Topper, Jean H. Alexander, Rebecca Ruppert, Anne B. Mazur, Shirlee L. Wong, Elizabeth Jane Mc Killop, Rita Rae Perry, Melanie M. Darling, Arnulfo Hernández, Jr., Tanya Reese and Katherine MacDonald, a Board resolution extending its sincere and grateful appreciation for their dedicated service to the State Board of Equalization and the State of California during their service as a Board Member's staff.

CHIEF COUNSEL MATTERS

RULEMAKING

Property Tax Rule 122.5, Fixtures, Section 100 Change

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the section 100 change to *Property Tax Rule 122.5, Fixtures*.

Request for Authorization to Publish Sales and Use Tax Regulation 1803.5, Long Term Leases of Motor Vehicles

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board authorized publication of *Sales and Use Tax Regulation 1803.5, Long Term Leases of Motor Vehicles*.

Petition to Amend Property Tax Rule 462.180, Change in Ownership-Legal Entities

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board approved the petition to amend *Property Tax Rule 462.180, Change in Ownership-Legal Entities*.

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TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM***Consideration of Claim***

Jennifer Franco Smith, 162415

7-1-85 to 4-21-89, \$19,275.00 Claim for Reimbursement

Issues: Whether the Department's position on claimant's petition for redetermination was justified and reasonable.

Whether the amounts claimed as fees are excessive.

Action: Mr. Klehs moved that the claim for reimbursement be denied. The motion was seconded by Ms. Mandel but no vote was taken.

Mr. Andal moved that the claim for reimbursement be granted. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Mr. Parrish moved that the claim for reimbursement be limited to \$6,168.75. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal and Mr. Parrish voting no, the Board ordered that the claim for reimbursement be denied.

LEGAL APPEALS MATTERS, ADJUDICATORY

A1 Printing & Graphics, Inc., 47968

10-1-95 to 9-30-98, \$74,443.97 Tax

\$7,454.36 Penalty, Negligence

Considered by the Board: August 21, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Assigned Seating & MFG Group, Inc., 89000218870

7-1-91 to 12-31-94, \$41,348.03 Tax

\$4,750.23 Penalty, Negligence

Assigned Seating & MFG Group, Inc., 89000218880

7-1-89 to 12-31-90, \$581.98 Tax

\$00.00 Penalty, Failure to File

Considered by the Board: August 21, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

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Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Telstar Cellular Corporation, 89000486500

1-1-94 to 12-31-96, \$58,309.83 Tax

Recomm Wireless Inc., 89002078210

1-1-94 to 5-31-97, \$44,361.05

\$00.00 Penalty

Considered by the Board: August 20, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

J. Allen Beebe, 88463

8-31-94, \$8,069.89 Assessment

8-31-95, \$23,003.76 Assessment

12-24-96, \$18,929.45 Assessment

Ocat, Inc., 88699

1994, \$196,480.00 Assessment

1996, \$43,728.00 Assessment

Considered by the Board: September 11, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

George Graham Hardie, 127537

1993, \$1,172,932.00 Assessment

Considered by the Board: August 20, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs not participating, the Board adopted a decision sustaining the action of the Franchise Tax Board.

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Stretto Enterprises, 76184

1992, \$545,680.73 Assessment

Considered by the Board: August 20, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision which modified the action of the Franchise Tax Board.

Wilshire Restaurant Group, Inc., 166408

1994, \$242,767.00 Assessment

1995, \$199,391.14 Assessment

Considered by the Board: November 13, 2002

Action: The Board deferred consideration of this matter to the January meeting.

Amir H. and Lila Ghassemi, 112341

1996, \$18,076.00 Assessment

\$4,519.00 Late Filing Penalty

1997, \$4,974.00 Assessment

Considered by the Board: October 3, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Crisa Corporation, 34424

1987, \$116,378.00 Assessment

1988, \$227,597.00 Assessment

1989, \$278,825.00 Assessment

Considered by the Board: Opinion on Petition for Rehearing

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board adopted the opinion on petition for rehearing.

Pacific Corp., 90027

1984, \$498,412.00 Assessment

1985, \$517,835.00 Assessment

1986, \$58,523.00 Assessment

1987, \$151,313.00 Assessment

1988, \$359,742.00 Assessment

1989, \$461,972.00 Assessment

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Considered by the Board: Opinion on Petition for Rehearing

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board adopted the opinion on petition for rehearing.

Marc Feldman, 130126

1996, \$19,808.00 Assessment

1997, \$12,639.89 Assessment

Considered by the Board: May 7, 2002

Action: The Board took no action.

Dale Mitchell Heindell, 103375

1980, \$2,204.59 Claim for Refund

Considered by the Board: June 20, 2002

Action: The Board took no action

Baxter Healthcare Corporation, 150881

1992, \$1.00 or more Claim for Refund

1993, \$1.00 or more Claim for Refund

1994, \$1.00 or more Claim for Refund

1995, \$1.00 or more Claim for Refund

Considered by the Board: August 1, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs and Mr. Parrish voting yes, Mr. Andal not participating, Ms. Mandel abstaining, the Board adopted a decision denying the petition for rehearing.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matters: *Barnes & Noble.com*, 89872 and *Yamaha Motor Corporation U.S.A.*, 102973, 89000448380.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

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Keith and Kevin Schultz, 66285, 66283, 114641

1-1-92 to 12-31-96, \$7,268.51 Tax

\$726.85 Penalty, Finality

1-1-97 to 3-31-99, \$8,417.57 Tax

\$841.76 Penalty, Finality

1-1-97 to 3-31-99, \$26,479.72 Tax

\$1,790.68 Penalty, Failure to File

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Barnes & Noble.com, 89872

11-15-99 to 3-31-00, \$1,128,721.89 Tax

\$00.00 Penalty, Failure to File

Action: The Board took no action.

Yamaha Motor Corporation U.S.A., 102973, 89000448380

4-1-96 to 9-30-99, \$20,545.10 Tax

10-1-90 to 6-30-94, \$148,091.98 Tax

Action: The Board deferred consideration of this matter.

John Thomas Askew, 63567

1-1-92 to 6-30-98, \$74,349.54 Tax

\$19,778.77 Penalty, Fraud

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Vahe and Silva Bidanian, 152301

7-1-98 to 6-30-01, \$17,166.32 Tax

Action: Redetermine as recommended by the Appeals Division.

Paradise Galleries, Inc., 89000620580

1-1-95 to 12-31-97, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Becker CPA Review Corp., 105867

1-1-97 to 12-31-99, \$51,422.89 Tax

Action: Redetermine as recommended by the Appeals Division.

Skip's Music Incorporated, 145954

7-1-98 to 7-31-00, \$00.00 Tax

\$00.00 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Division.

Streamlogic Corporation, 141855

7-1-98 to 6-30-00, \$2,332.53 Tax

Action: Redetermine as recommended by the Appeals Division.

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Avnet, Inc., 89000228820

7-1-91 to 6-30-95, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Division.

The Phoebus Company Inc., 89000259970, 49459, 47417

4-1-95 to 3-31-96, \$00.00 Tax

\$00.00 Penalty, Negligence

4-1-96 to 6-30-98, \$00.00 Tax

\$00.00 Penalty, Negligence

4-1-96 to 6-30-98, \$1.00 or more, Claim for Refund

Action: Redetermine as recommended by the Appeals Division.

LEGAL APPEALS MATTERS, CONSENT**LifeScan, Inc., 29592, 37314, 48966**

10-1-94 to 12-31-97, \$5,665,197 Tax

Action: The Board deferred consideration of this matter to the next Board meeting.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Stephen D. Abrams, 169561

1998, \$1,612.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Becky Chee, 162181

1999, \$155.56 Assessment

Action: Sustain the action of the Franchise Tax Board.

Paul S. Cowan, 162182

1994, \$575.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Quy V. Duong, 166622

1999, \$419.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Patricia C. Jordan, 172411

1997, \$194.07 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Carole K. Lawing, 144670

1987, \$6,233.49 Assessment

Action: Sustain the action with concession by the Franchise Tax Board.

Paul R. Marrone, 169288

1998, \$875.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Blaine B. McCafferty, 93412

1996, \$1,693.00 Tax

\$338.60 Penalty, Accuracy Related

Action: Sustain the action with concession by the Franchise Tax Board.

Neva J. McDannald, 155492

1997, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Martin Pacheco, 169951

1998, \$1.00 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Kenneth I. Slon, 167732

1998, \$168.79 or more Assessment

Action: Sustain the action of the Franchise Tax Board.

Yi-Shin Tsai, 167973

1998, \$7,550.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Allan Deborah Wilkinson, 168010

1994, \$1.00 or more Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Cary Jay Behar, 92485

1998, \$259.00 Tax

\$64.75 Penalty, Notice and Demand

\$100.00 Penalty, Late Filing

Action: Deny the petition for rehearing.

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HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Steve K. Bell, 165759

2001, \$325.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Taisir Ahmad Farha, 156258

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Ruth B. Jones, 168191

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Fai Lai, 173452

2001, \$182.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Jahkaii J. Miller, 169378

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Judy H. Moua, 171038

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Candelario D. Nepangue, 170298

2001, \$200.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Gloria Provins (for Paris Provins, Deceased), 171033

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Patrick Dennis Shields, 165723

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Alice A. McGee, 170347

2000, \$240.00 Claim for Credit

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

ChanceCarson, Inc., 191798

12-8-97, \$59,895.00

Action: Approve the redetermination as recommended by staff.

Fleet National Bank, 153371

12-26-00, \$898,425.00

Action: Approve the redetermination as recommended by staff.

MercMed, LLC, 153345

5-11-98, \$66,330.00

Action: Approve the redetermination as recommended by staff.

Installation Software Tech, 196501

1-1-98 to 6-30-02, \$57,714.56

Action: Approve the relief of penalty as recommended by staff.

Compucom Systems, Inc., 195688

7-1-99 to 3-31-00, \$51,616.23

Action: Approve the denial of claim for refund as recommended by staff.

New Edge Network, Inc., 197303

1-1-99 to 12-31-01, \$1,085,170.15

Action: Approve the denial of claim for refund as recommended by staff.

Pacific Bell, 158215

1-1-94 to 12-31-97, \$1,743,809.20

Action: Approve the denial of claim for refund as recommended by staff.

Lifecore Biomedical, Inc., 197147

7-1-98 to 6-30-01, \$50,166.23

Action: Approve the denial of claim for refund as recommended by staff.

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SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board made the following orders:

Sungard Treasury Systems, Inc., 197056

4-1-01 to 6-30-01, \$53,410.00

Action: Approve the credit and cancellation as recommended by staff.

ICN Pharmaceuticals, Inc., 196270

7-13-99, \$206,117.20

Action: Approve the credit and cancellation as recommended by staff.

Hardees Food Systems, Inc., 150405

8-6-97, \$167,265.48

Action: Approve the credit and cancellation as recommended by staff.

Aixtron, Inc., 196946

10-1-00 to 3-31-01, \$86,240.00

Action: Approve the credit and cancellation as recommended by staff.

Kelly Wallace Black, 197698

7-1-00 to 6-30-01, \$131,537.02

Action: Approve the credit and cancellation as recommended by staff.

CSCBD, Inc., 196678

7-1-01 to 9-30-01, \$71,084.58

Action: Approve the credit and cancellation as recommended by staff.

Mike's Mobile Windshield, Inc., 197004

4-1-00 to 3-31-01, \$103,002.36

Action: Approve the credit and cancellation as recommended by staff.

Time Finance Company, 194862

1-1-00 to 12-31-01, \$119,682.91

Action: Approve the refund as recommended by staff.

Sargent & Berman Inc., 55063

7-1-96 to 9-30-00, \$234,959.63

Action: Approve the refund as recommended by staff.

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Bayside Record Distributors, Inc., 168541

10-1-01 to 12-31-01, \$60,287.92

Action: Approve the refund as recommended by staff.

Kobold's Nursery, Inc., 196401

1-1-99 to 12-31-01, \$50,866.94

Action: Approve the refund as recommended by staff.

Toppan Electronics, Inc., 141453

10-1-97 to 9-30-00, \$268,568.20

Action: Approve the refund as recommended by staff.

Point Loma Credit Union, 194860

1-1-99 to 9-30-01, \$167,214.67

Action: Approve the refund as recommended by staff.

Ford Motor Company, 169859

1-1-01 to 9-30-01, \$81,716.67

Action: Approve the refund as recommended by staff.

Pilkington North America, Inc., 89000847590

10-1-94 to 9-30-97, \$65,120.98

Action: Approve the refund as recommended by staff.

Compucom Systems, Inc., 104249

7-1-97 to 6-30-02, \$161,633.46

Action: Approve the refund as recommended by staff.

Kinko's Inc., 195245

1-1-98 to 6-30-01, \$73,869.90

Action: Approve the refund as recommended by staff.

Awans Enterprises, Inc., 195232

1-1-99 to 12-31-01, \$104,922.68

Action: Approve the refund as recommended by staff.

March Community Credit Union, 142573

7-1-98 to 12-31-01, \$93,370.89

Action: Approve the refund as recommended by staff.

New Edge Network, Inc., 82715

1-1-99 to 12-31-01, \$729,930.49

Action: Approve the refund as recommended by staff.

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All Computer Solutions, Inc., 145840

1-1-00 to 9-30-01, \$84,787.07

Action: Approve the refund as recommended by staff.

Time Oil Co., 145841

4-1-01 to 9-30-01, \$241,230.17

Action: Approve the refund as recommended by staff.

City of Glendale, 155682

10-1-98 to 3-31-99, \$90,119.83

Action: Approve the refund as recommended by staff.

Visa International Service Assn., 196525

10-1-98 to 9-30-01, \$2,047,030.32

Action: Approve the refund as recommended by staff.

BCI Coca-Cola Bottling Co., L. A., 195695

1-1-99 to 9-30-01, \$54,580.48

Action: Approve the refund as recommended by staff.

BCI Coca-Cola Bottling Co., L. A., 115253

1-1-96 to 3-31-01, \$211,444.11

Action: Approve the refund as recommended by staff.

Lifecore Biomedical, Inc., 144778

7-1-98 to 6-30-01, \$460,138.44

Action: Approve the refund as recommended by staff.

Novadigm, Inc., 91480

7-1-00 to 9-30-00, \$122,380.35

Action: Approve the refund as recommended by staff.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**Thomas B. Allen, 144126**

1986, \$14,366.00 Tax

\$1,436.60 Penalty

1987, \$3,471.00 Tax

\$867.65 Penalty

For Appellant:

Edward B. Simpson, Attorney

For Franchise Tax Board:

Bruce Langston, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

DECEMBER 19, 2002

Issues: Whether the statute of limitations bars the second notice of deficiency assessments issued by respondent for 1986 and 1987.

Whether the second notice of deficiency assessments are barred by the doctrines of res judicata and/or collateral estoppel.

Appellant's Exhibit: Declarations (Exhibit 12.30)

Respondent's Exhibit: Schedule of adjustments (Exhibit 12.31)

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

OTN, Inc. and Affiliates, 162176

3-31-95, \$1,444,975.00 Claim

For Claimant:

Albert S. Golbert, Attorney

For Franchise Tax Board:

Charlene Woodward, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant has shown that it qualifies for the bad debt deduction as guarantor of a loan because it entered into the guarantee agreement before the loan became worthless.

Whether appellant has shown that the payments it made in discharge of its agreement to act as guarantor were not repayments of appellant's own loan.

Whether appellant has shown that the payments it made in discharge of its agreement to act as guarantor were not a dividend paid for the benefit of a shareholder.

Whether appellant has substantiated the claimed bad debt amount.

Whether respondent improperly raised a new argument on appeal.

Appellant's Exhibit: Appellant's summary (Exhibit 12.32)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

The Board recessed at 12:10 p.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Parrish, Mr. Andal and Ms. Mandel present.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Clyde J. Berg, 154076

1995, \$206,318.00 Assessment

Carl E. and Mary Ann Berg, 154075

1995, \$206,317.00 Assessment

For Appellant:

Carl E. Berg

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

DECEMBER 19, 2002

Issues: Whether certain provisions of Internal Revenue Code section 108, relating to excluding the discharge of "qualified real property business indebtedness" from gross income, was effective in California for the 1995 tax year.

Whether appellants realized cancellation of debt income during the 1995 tax year.

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board reversed the action of the Franchise Tax Board.

John M. and Joy E. Richards, 134949

1992, \$262,140.00 Claim for Refund

1993, \$273,657.00 Claim for Refund

1994, \$211,222.00 Claim for Refund

For Claimant:

No Appearance

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Action: The Board took no action.

David R. and Patricia A. Walsh, 162751

1996, \$38,470.00 Claim for Refund

For Claimant:

Robert K. Stephenson, C.P.A.

For Franchise Tax Board:

Terry Collins, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellants have shown they are entitled to the credit for taxes paid to other states.

Appellant's Exhibit: Affidavit and Section 18001 (Exhibit 12.33)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

Mary K. Shiells, 169850

1998, \$4,624.65 Claim for Refund

For Claimant:

John Shiells

For Franchise Tax Board:

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant is entitled to a refund of a late filing penalty.

Whether appellant is entitled to a refund of an estimated tax penalty.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, the Board reversed the action of the Franchise Tax Board.

DECEMBER 19, 2002

Polaroid Corporation, 62415
1990, \$5,287.00 Assessment
1991, \$3,151,099.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Andrea Chang, Tax Counsel

Action: The Board took no action.

Chris and Diane Chandler, 162178
1998, \$2,629.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Jeanne Siebert, Tax Counsel

Action: The Board took no action.

BUSINESS TAXES APPEALS HEARINGS

Burton M. and Joellen J. McChesney, 91698
11-13-98, \$9,495.00 Tax

For Petitioner:

Eric Miethke, Attorney

Burton Mc Chesney

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether petitioners owe use tax on their purchase of a vessel, which was purchased and first functionally used out of state and then brought to California for use here.

Whether accrued interest was properly calculated.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be granted.

Steven G. Puglisi, 100269
11-24-97, \$3,480.00 Tax

For Petitioner:

Steven Puglisi

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the available evidence is sufficient to overcome the presumption that petitioner purchased the vessel at issue for use in California.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be granted.

DECEMBER 19, 2002

James D. Green and Brian J. Wilmes, 66259

12-2-97 to 12-31-99, \$30,091.00 Tax

For Petitioner:

James D. Green

Harry Gordon Oliver, Attorney

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the Board should be estopped from assessing tax and interest against petitioners on the gross receipts from sales of marijuana for medical purposes because petitioner alleges that it relied upon erroneous oral advice provided by the Board.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

EGS and Company Trust, 135923

1-1-97 to 9-30-00, \$13,836.00 Tax

\$00.00 Penalty, Negligence

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Action: The Board took no action.

McDonnell Douglas Corporation, 106386

1-1-95 to 12-31-97, \$1,963,420.55 Tax

For Petitioner:

Joseph A. Vinatieri, Attorney

Chris Petalek, Tax Specialist

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the transfer of title to the subject aircraft was a sales transaction or a nontaxable financing transaction.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

IBJTC Leasing Corporation, 89000857190

1-1-94 to 9-30-97, \$415,017.74 Tax

For Petitioner:

Joseph A. Vinatieri, Attorney

Chris Petrcek, Tax Specialist

For Sales and Use Tax Department:

Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the rental receipts under the terms of a sale and leaseback agreement for equipment are subject to use tax.

Whether relief from interest for the month of January 1998 is warranted.

DECEMBER 19, 2002

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON APPEALS HEARD DECEMBER 19, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *Thomas B. Allen, 144126*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *OTN, Inc. and Affiliates, 162176*, the Board sustained the action of the Franchise Tax Board.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the appeal of *David R. and Patricia A. Walsh, 162751*, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON PETITIONS HEARD DECEMBER 19, 2002

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *James D. Green and Brian J. Wilmes, 66259*, be redetermined as recommended by the Appeals Division.

Mr. Parrish moved to grant the petition. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish and Mr. Andal voting no, the Board ordered that the petition of *McDonnell Douglas Corporation, 106386*, be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish and Mr. Andal voting no, the Board ordered that the petition of *IBJTC Leasing Corporation, 89000857190*, be redetermined as recommended by the Appeals Division.

DECEMBER 19, 2002

BUSINESS TAXES APPEALS HEARINGS

Harry & Sons Automotive Services Inc., 62097

1-1-96 to 12-31-98, \$379,464.00 Tax

\$00.00 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the audited understatement of taxable sales was established in accordance with the facts.

Whether additional allowances for self-consumption are warranted.

Whether an allowance for bad debts is warranted.

Whether the evidence shows that petitioner should be allowed more than one percent for pilferage by customers.

Whether the evidence shows that the audited taxable purchase ratio is excessive.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 4:05 p.m.

The foregoing minutes are adopted by the Board on February 6, 2002.